P.F. 92797.

G. R. S. IX-5]

Previous references.

L.R. 81790.

Later references.

1893-94

191

(L.R.)

File No. 83793.

Serial Nos. 1-7

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-7

in ~~Part~~ B for June 1894.

SUBJECT.

Appeal of Thimme Gowda and Mondiagiri Gowda of Kaggere Kunigal taluk regarding the Pateli.

W D 1250—GPE—30,000 28-1-19

countermarked at Indexed

[illegible]

Reg. C. Suit. 7 of 1922 – 23 on the file of the Court, Sub-Court [illegible] District.

Plaintiff	Defendant
1. Vinayakarao [illegible] (Since dec) Son of [illegible] [illegible]	1. [illegible] [illegible] son of Vinayakarao [illegible]
2. [illegible] Vinayakarao	2. [illegible] [illegible]

1. This is a suit for the partition of three villages viz. [illegible], [illegible] & [illegible] in [illegible] Taluk of Indian-State, [illegible].

2. Kale family was the [illegible]. He had two sons viz. Vinayakarao and [illegible]. They died [illegible] years ago. The plaintiffs are the [illegible] of the first son Vinayakarao and the defendants of the second son [illegible] the defendants of the second son [illegible] family. Therefore both the parties are distinct parties.

3. It is mentioned in the [illegible] Register of Pitt that [illegible] the first [illegible] of [illegible] the 2nd Lot. The [illegible] in the Register [illegible] also the [illegible] [illegible] Reg. Rule. That Register is the [illegible] defendant. He died [illegible].

being of the said - his wife the 2nd defendant.

4. The plaint filed by the plaintiffs before the Dy. Commissioner Tumkur Distt. on the 15th June 1899, is as follows.

In 1890 the Gen. of Inm. decided ~~[illegible]~~ that out of the aforesaid three villages, which then lay in the Sagar of the 2nd defendant till 1890, the villages of Kaggere & Kavada might be confirmed to the 2nd defendant Kadakatte Swamy and Siddanaikanapura, but might be registered in the name of the 2nd plaintiff Timmappa. On the Appeal that order ~~[illegible]~~ was quashed and the three villages were confirmed to the 2nd defendant. Notwithstanding this, as they are poor people who have been from the beginning conducting the duties of the office according to the usages, they pray that the villages in question should be distributed among both parties so that they may be permitted to do their duty by turns.

5. The plaint was, according to the Civil Procedure Code, referred to the Tumkur Municipal Council for preliminary investigation. Thereupon the witnesses on behalf of the plaintiff were examined in the presence of both parties till the 2nd April 1895. On the 3rd April as

both the 2nd plaintiff and the 2nd defendant presented the foregoing Registration Papers to the Arbitrators: —

The ~~[illegible]~~ Arbitrators then [illegible] the 2nd plaintiff without the 2nd defendant. ~~[illegible]~~ The ~~[illegible]~~ Arbitrators then [illegible] as heretofore the continued to be managed by the 2nd defendant without ~~being [illegible]~~ any interference by the 2nd plaintiff ~~in [illegible]~~. The hotel business thus should be conducted by the 2nd plaintiff and defendant by turns such as was been since 1925. They then signed the registration ~~[illegible]~~ agreement. ~~But~~ They also stated in their depositions taken before the Arbitrators, on the same day, that they presented the said registration with their own free will and prayed for decision accordingly. Therefore the Arbitrators stopped further enquiry and recorded the prayer of the 2nd parties for general decree with costs as prayed for. The Collector referred it to this court for disposal.

6. The prayer ~~[illegible]~~ of the parties and free will the prayer of both parties. The 2nd plaintiff further relinquished the registration and prayed for ~~the~~ decree accordingly. The 2nd defendant denied it. It is proved by the prayer that before the Arbitrators he relinquished the said registration of his own free will. Consequently

that it is just & proper that the lease in question should be set aside by the said judgment.

I do, in accordance with the judgment, decree that the sale deed of Kappiri Hanumappa dated 14th July 93 executed by the 1st plaintiff and defendant jointly in favour of Kappiri Hanumappa should be, declared in the 1st plaintiff's name also should be restored the lease executed therewith, and that of Hanumappa should be set aside in the sale judgment of the 1st defendant. Each should bear his own cost.

Dated 29th May 1893 Anantapur.

(Signed) A. Ramachandra Rao
Gen. Subordinate Commissioner
Anantapur District

Grounds of Appeal

Appeal Petition No 383 of 1893-94.

Appellants:-

1. Kempe Gowda
2. Moodlegere Gowda
Minor sons of Venkate Gowda of Kaggere Kunigal Taluk by their guardian and maternal uncle Kempe Gowda of Kaggere.

vs

Respondents:-

1. Timme Gowda ~~son~~ son of Timmalegiri Gowda (Plaintiff)
2. Patel Venkate Gowda.

Residents of the same village (Defendants & father of appellants).

The appellants appeal direct against the orders of the Deputy Commr. Tumkur, dated 4 July 1893 communicated to them

parties to the suit is against the law

5. The suit is against the terms of a Muchalika executed in 1866 by the fathers of the Plaintiff & ~~respt~~ defendant respectively & others.

6. According to the terms of the Muchalika the Plaintiff and other heirs are only entitled to shares in the Potige and ~~are~~ ~~not~~ have no right ~~to the~~ claim to hold the office.

7. The order of the Dy. Commr (referring the appellants to a regular suit), without making them parties to the same suit as prayed for by them is unjust.

& Pray for issue of orders to the lower court that the appellants & other heirs shown in the genealogical tree may ~~be~~ be made parties to the same suit & the ~~so~~ proceedings

In Endorsement No. 3/1 on the following grounds:-

1. The Rajenama tendered by the 2nd Respondent of the Patelli Haq of the village in favor of the 1st Respondent is against the law.

2. The lower court exceeded its powers in entertaining and disposing of the suit brought by the 1st Respondent and as the suit was not laid ~~it should not have~~ to set aside the decision passed by Govt. in Appeal No. 643 dated 7 1890.

3. The acceptance by the lower court ~~at the time of settling the issues~~ of a genealogical tree which was not produced by the Plaintiff with the plaint is wrong inasmuch as the deft. had not an opportunity of ~~the same procedure~~ ~~the Plaintiff from~~ advancing his plea with reference to it at the ~~further evidence~~ time of settlement of issues.

4. The disposal of the suit without hearing the other members shown in the genealogical tree parties

9 Indian

Petition No 383 of 1893-94

Petrs - 1. Timme Gowda
2. Muddappi Gowda
Sons of Venkatè Gowda.

Counter Petrs - 1. Timme Gowda son of
Timmal Giri Gowda
2. Venkate Gowda, father of Petrs

Petitioners' father Venkatè Gowda held the Patèli of (1) Haggere, (2) Kaval & (3) Hanta.

In the course of proceedings instituted by the Auditor to appoint Schedule Patèls for the three villages on the ground that one could not manage all, the 1st Commr allowed Venkatè Gowda to retain Haggere & Kaval and appointed the 1st Counter Petitioner as Patèl of Hanta. On appeal preferred by Venkatè Gowda, the Government in their decision dated 22nd November 1890 cancelled the 1st Commrs order in favor of 1st Counter Petr and directed the restoration of ~~[illegible]~~ the Patèli of Hanta to Venkate Gowda

Thereupon the 1st Counter-Petitioner & his father filed a regular suit for the recovery

of a share in the office of the village. In the course of the trial of that suit, the defendant Kerchi Venkatagowda and the 1st Counter Petitioner, entered into a compromise & produced a Razinama, under which the Patel of Kaval was to be given to the 1st Counter Petr. and that of Kappur enjoyed by him in alternate years.

The Amildar who had been directed to record evidence submitted the proceedings to the Dist. Forest Officer on 29th April 1893. The Dist. Forest Officer was directed to dispose of the case, and he, on receipt of papers on 10th May 1893, posted the case to 29th May 1893 for hearing.

On the 17th May, i.e. 12 days before the date of hearing, the present Petitioner, the son of Venkatagowda made an application to the Dist. Forest Officer, praying that the 1st Counter Petitioner had no

right to a share in the office and that their father Venkate Gowda in entering into the compromise acted colluding and in excess of his powers; and praying that they might be made parties to the suit. This Petition which should have been sent to the General Assistant Comm^r, was returned on 19th May 1893 with a ~~[illegible]~~ endorsement signed by an Ass^t Comm^r for the D^y Comm^r, to the effect that 'Copy of the order appealed against should be produced'.

When the case came on for hearing on 29th May, Venkate Gowda repudiated the Razinama, but the Genl Ass^t Comm^r found that it had been voluntarily executed by Venkatagowda and passed a decree in accordance with its terms.

On the 30th June 1893 the Petitioners again addressed the D^y Comm^r saying that their petition was not an

appeal, but an application to be joined as parties to the suit. That appn was returned on the 4th July 1893 with an endorsement that Petrs might seek redress by a regular suit.

Petitioners urge that they as well as others shown in a genealogical tree filed by the 1st contest Petrs ought to have been made parties to the suit.

The questions for considn are:—

(1) Whether in a regular suit all persons claiming or appearing to have an interest in the subject matter of the suit should not be made parties, to avoid multiplicity of suits.

(2) Whether the application made by Petrs before the final hearing of the suit should not have received due consideration.

Petrs are minors represented by their maternal uncle.

Subn for orders

They might have been included as parties, but seeing they have not been there is nothing to prevent them establishing their right by a regular suit. We can do nothing in

Petitioners should sue to establish right by a regular suit

Sd/ [illegible]
20/5/94

27/5 Draft endorsement [illegible]
[illegible] 28/5

[illegible] 15/3.

Proceedings reported to earlier
for Mgr

(General Serial No. 32.)

1893. (10) 13

No. 383.

Name of Petitioner. Kempe Gowda, guardian to minor sons of Thimmagowda & Hoollegowda, of Venkatagowda

Village. Kegere

Taluk. Kunigal

District. Tumkur

Date of Arzi. 4-8-93

Date of Receipt. 7-8-93

Date of Disposal.

No. of Enclosures: two

L. R. 83-93-1

ABSTRACT.

officials against the Deputy Commissioner's order No. 3/1, dated 14th July 1893, in re the minors' claim to the patailship of the said village on the following grounds: that the Deputy Commissioner was wrong in ~~ordering~~ passing orders on the petition of the minors instead of referring it to the General Assistant Commissioner for disposal; that according to

to the terms of the Mootchalika, the Plaintiff & other Shareholders have only a right in the share of the Patti & not in the office of the Patail; etc.

Prays that the entire records may be revised, that the case may be heard & favourable order passed & that an order may be sent to the Deputy Commissioner not to register the name of the Plaintiff as the Patail of the village pending the disposal of this appeal.

[illegible]

(4) 15

(General Serial No. 32.)

1890.

No. 1057

Name of Petitioner. Thakkaragada Patel

Village. Naggere

Taluk. Honeghal

District. Shimoga

Date of Arri. 5-8-90

Date of Receipt. 8-8-90.

Date of Dispesal.

No. of Enclosures.

ABSTRACT.

Prays that the ~~[illegible]~~ patelship of Nadacoomagh ~~are Hoolitha~~ may be conferred on him as he has a claim for it. The Patel ship is now given to one Thimmagouda

The file of proceedings is given to T. Krishna Rao for perusal for submission to the Council.

T. Krishna Rao will hasten the papers.

28/8/90 L.R 83-93-2

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46

No.
1057

8/8/90

[illegible]

[illegible]
7-90

5/8/90

[illegible]

21/72 (11) Result issued 21/8/93

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT.

OFFICIAL MEMORANDUM.

L.R. 83-93

The accompanying Petition No. 383 dated 4th August 93 received at the Dewan's Office from Thimmegowda & another, minors by guardian Kempegowda, Kaggere, Kunigal Taluq, appealing against the Deputy Commr's order dated 4th July 93, regarding the Patelship of Kaggere.

is forwarded, together with its two enclosures, to the Deputy Commr Tumkur District for submission of proceedings with a report on the facts of the case and on the points taken in the petition

2. The petition with its enclosures should be returned

By Order,

Draft

15/8

Chief Secretary.

15 BANGALORE, 17 August 1893.

M. G. C. P. Bangalore.—21-11-92—3,000.

M/8.

(12)

(General Serial No. 30.)

From 1893. No. 4995-35

The Deputy Commissioner
Tumkur District

To

The Chief Secretary to the ~~Dewan~~ Govt.
of Mysore.

Dated Tumkur 6th December 1893

Despatched

Received

Enclosures No. Records & appeal petn in a charade form.

General No.
No. 499

Vide Official memo
No. 272 of the 5th August 1893

Submits the entire record
regarding the Potale of
Kaggere in the Tumkul
Talluk, with the appeal
petition &c. as requested.

Pet Raised
19-12-93

Red

1. Copy of a translation of the Govt
Order No. Ramachandra
Judgment 3 29 Aug 1893
(2) Abstract of the proceedings appealed
Copy enclosed in the records upon
the subject

Filed

AR
24/3/94

Submitted for orders
with a notice -
[illegible]
4/3.

Tumkur District

19

Deputy Commissioner's office
Tumkur 16th December 1893

No. 499

To.

The Chief Secretary
to the Government of Mysore

Sir

With reference to your official Memo No. 272 of the 15th August 1893 forwarding the petition of Timmé Gowda and others of the Kaggere village in the Kunigal Taluk appealing against the order of this office regarding the Potali of that village and calling for a report and the record of the case, I have the honor to state as follows—

2. In June 1891 one Tirumalagiri Gowda and his son brought a Regular Revenue suit against Govinda Gowda and his son Venkatégowda

(father of the Petitioners) for the recovery of the Poteli of either Kaggere village and Kaval or of Hanta, pleading that as cousins they were Hukdars for the same.

3 The plaint was referred to the General Assistant Commissioner for disposal and he referred it to the Amildar for enquiry and report.

4. During the course of enquiry both the 1st Plaintiff and 1st Defendant died. The 2nd Plaintiff and the 2nd Defendant (petitioners' father) having settled the matter amicably presented a razinamah on the 3rd April 1893 before the Amildar to the effect that as they were equal sharers to the office in question they would do the duties of Kaggere by turns and allow the 2nd Plaintiff the Kaval and the 2nd Defendant the Hanta. The Amildar sent their Razinamah to this office

for orders. It was referred to the General Assistant Commissioner for disposal. That officer having heard both the parties decided the case agreeably to the terms of the Razinama. Upon this the Petitioners addressed this office in June 1893 praying that the Razinamah presented by the 2nd Defendant (their father) should not be accepted, but they were informed by an endorsement dated the 4th July 1893 that they should bring a regular Suit against him they have now appealed.

4. The enclosures of your memo under reply are herewith returned together with the record of the case.

I have the honor to be
Sir
Your Most Obedient Servant
[signature]
Deputy Commissioner
Tinnelly District

22

MYSORE DEWAN'S OFFICE.
PETITION DEPARTMENT.
RECD. No. 383
DATE 7-5-93

Stamps Two only

L.R. 83-93-5

[illegible]

[illegible] 1893.

[illegible]
1892-ನೆ ಇಸವಿಯ ಕಾಯಿದೆ ಪ್ರಕಾರ —

ಅರ್ಜಿದಾರ — [illegible]
ಸಾಕ್ಷಿದಾರರು
1. [illegible] —
2. [illegible] —

[illegible]

[illegible]
(ಸಹಿ) [illegible]
[illegible]

[illegible]

[illegible]

[illegible]

2. [illegible] 1870 [illegible]

3. [illegible]

4. [illegible]

5. [illegible] 1864 [illegible]

6 [illegible]

Proceedings of the Government of the Kingdom of Sakaraia Tulgam

(16)

29

Read

Petition registered no. 388 dated 4th August 1893 from Sarima Sonda and another of Kagera Sangal

No 1057

Shri, appealing against the order of the Deputy Commissioner regarding the Patti of the above village and requesting that they as well as other shown in the genealogical tree filed by the counter petitioner might be made parties to the suit.

(2) Letter no 499 S 16th December 93 from the Deputy Commissioner Sunshine District, opinating on the above, and the Proceedings received herewith -

L.R. 83—93—6

order thereon by 2/9/3
Pet 2021
d/9-6-94

The Petitioners might have been included as parties, but since they have not been there is nothing to prevent their establishing their right in a regular suit. They will be free to establish their right in a regular suit.

(Commissioner) 2/9/94 (Chief Secretary)

I. 28/9/5
The Deputy Commissioner
Sunshine District and the Proceedings

208 02 00020 T

16-6-94

No. 383

(13)

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT,

9th June 1894

Endorsement granted to Thimme Gowda and another, minors by guardian Hempe Gowda of Kaggere, Kunigal taluk

in reply to their Petition Registered No. 383 dated 4th August 1893 appealing against the order of the Deputy Commissioner, regarding the Dakeli of the said village

Petitioner is informed that they should establish their right by a regular suit.

The enclosures are returned

L.R. 83-93-7

"By Order"

Chief Secretary.

M. G. C. P. Bangalore—6-3-94—2000.